

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In re:

**Robert Lee Ellis and  
Beverly Hobbs Ellis,**

Bankruptcy Case No.: 10-82128

Soc. Sec. Nos. xxx-xx-7468 & xxx-xx-1447  
Mailing Address: 341 Winchester Road, ,  
Rougemont, NC 27572-

Debtors.

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**Robert Lee Ellis and  
Beverly Hobbs Ellis,**

A.P. No.: \_\_\_\_\_

Plaintiffs,

**Beneficial Mortgage Co. of North Carolina,**  
Defendant.

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**VERIFIED COMPLAINT TO VALUE COLLATERAL**

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by Beneficial Mortgage Co. of North Carolina.
3. The Plaintiffs are filed this bankruptcy case on November 19, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant Beneficial Mortgage Co. of North Carolina is a corporation and/or a partnership with an office and principal place of business located at Post Office Box 21188, , Eagan, MN 55121- and/or 780 Johnson Ferry Road, Suite 600, Atlanta, GA 30342- .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
5. The Plaintiffs own real property located at 641 Winchester Road, Rougemont NC 27572. The legal description of the property is as follows:

ALL THAT CERTAIN PROPERTY SITUATED IN THE TOWNSHIP OF MOUNT TIRZAH IN THE COUNTY OF PERSON AND STATE OF NORTH CAROLINA, BEING

MORE FULLY DESCRIBED IN A DEED DATED 04/28/1979 AND RECORDED 05/05/1979, AMONG THE LAND RECORDS OF THE COUNTY AND STATE SET FORTH ABOVE, IN DEED VOLUME 156 AND PAGE 588.

6. American Home Mortgage Servicing Inc. holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$62,320.31. This Deed of Trust originally given to and held by Option One Mortgage Corporation. This Deed of Trust was recorded on January 7, 2002, in Book 357 at Page 609, Person County Registry of Deeds.
7. Beneficial Mortgage Co. of North Carolina holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$32,040.48. This Deed of Trust was recorded on November 13, 2003, in Book 463 at Page 353, Person County Registry of Deeds.
8. Beneficial Mortgage Co. of North Carolina holds a third Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$39,650.88. This Deed of Trust was recorded on January 11, 2007, in Book 618 at Page 43, Person County Registry of Deeds.
9. The fair market value of the said property is not greater than \$24,458.00.
10. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with Beneficial Mortgage Co. of North Carolina, secured by a third Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.

**WHEREFORE**, the Plaintiffs pray the Court find that said claim held by Beneficial Mortgage Co. of North Carolina, which is secured by a third Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order Beneficial Mortgage Co. of North Carolina to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: May 16, 2011

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiffs

North Carolina State Bar No.: 23003

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

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Plaintiffs,

**Beneficial Mortgage Co. of North Carolina,**  
Defendant.

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**VERIFICATION OF COMPLAINT TO VALUE COLLATERAL**

We, Robert Lee Ellis and Beverly Hobbs Ellis, the Plaintiffs in the above captioned case, hereby state, under penalty of perjury, that, to the best of our knowledge, that:

1. American Home Mortgage Servicing Inc. holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$62,320.31. This Deed of Trust originally given to and held by Option One Mortgage Corporation. This Deed of Trust was recorded on January 7, 2002, in Book 357 at Page 609, Person County Registry of Deeds.
2. Beneficial Mortgage Co. of North Carolina holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$32,040.48. This Deed of Trust was recorded on November 13, 2003, in Book 463 at Page 353, Person County Registry of Deeds.
3. Beneficial Mortgage Co. of North Carolina holds a third Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$39,650.88. This Deed of Trust was recorded on January 11, 2007, in Book 618 at Page 43, Person County Registry of Deeds.
4. The fair market value of the said property is not greater than \$24,458.00.

Dated: 5/9/2011

/s/Robert Lee Ellis

Robert Lee Ellis

Dated: 5/9/2011

/s/Beverly Hobbs Ellis

Beverly Hobbs Ellis

**Notarization:**

Sworn and subscribed before me on 5/9/2011\_

/s/Koury Hicks  
Signature of Notary Public

Commission expires: 5/29/2012

